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A Son Remembers Chief Justice Gibson...And His Mother

BLAINE A. GIBSON, THE SON OF CHIEF JUSTICE PHIL S. GIBSON, GAVE THIS ADDRESS
TO THE MONTEREY COUNTY BAR ASSOCIATION IN MAY 2007.

I am very honored to accept your invitation to speak about my father. He would probably have said not to, it was a long time ago, and no one would want to hear about him. That was his great modesty and humility. But I decided to do what I often tried as a teenager, sometimes with success, and overrule the Chief because so much of what he did and stood for need to be remembered, are especially relevant today, and can serve as an example in the legal profession, government, and

public service. As most of you know, my mother passed away almost a year ago. The last time I saw her was Mother's Day when I came for your annual Gibson dinner. She was friends with many of you, and I would like to speak about her as well.

My father once said: "To enjoy liberty it is sufficient that it be in one's soul; but to defend and preserve it is a task for the mind." Both of those are what his life was all about.

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THE GOVERNOR AND THE GIBSONS

(left to right) Gov. Edmund G. "Pat" Brown, Victoria Glennon Gibson, Blaine A. Gibson and Chief Justice Phil S. Gibson.

A Son Remembers Chief Justice Gibson...And His Mother

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He was born in 1888 in a small town in Missouri. Many of the books show 1892, but somewhere four years got shaved off and Papa just never bothered to correct it. His father, William Gibson, was also a lawyer. Papa said of him, "I can remember in the summer when farmers, widows, people from all backgrounds, were coming to see my father and sitting under a tree by our house. He spent hours with them, counseling them, talking to them, and never charged a penny." Hence a young Phil Gibson was inspired to law and a dedication to public service that is the reason for this award.

At 26 he was elected prosecutor in Worth County, Missouri. He always steered clear of partisan politics, while sticking to his principles and ideals. He told me proudly that his first vote for president was for Teddy Roosevelt who was running on the Bull Moose Party ticket.

In 1917 he volunteered to fight in World War I, where he received the Silver Star. Before heading home he studied at the Inns of Court in London. Then he homesteaded in Wyoming. He became an expert on land-lease law and represented homesteaders in their claims. Then he was hired by Standard Oil, as Papa explained it, "probably to keep me from helping the homesteaders." He moved to Los Angeles and passed the bar in 1923, the same year my mother was born, in the same town. For 15 years he practiced law and handled business for MGM, Loew's, and the founder of United Artists. His neighbor was Charlie Chaplin, and the Marx Brothers lived across the street. With neighbors like those, you couldn't take yourself too seriously. When I asked him why he was so successful, he said "I wasn't smart. I just worked hard and I was lucky."

Phil Gibson was Chief Justice of California from 1940 to 1964. He was appointed by Governor Culbert Olson, and swore in Governors Earl Warren three times, Goodwin Knight once, and Pat Brown twice. He had good relations with all from both parties. He knew all the presidents personally from Hoover through Reagan.

Father had some great stories. Sometimes he would be in the middle of telling one and make a mistake, or exaggerate a bit, and someone would say, "Oh no, I was there, it didn't happen that way." Without missing a beat or engaging in a debate, Papa would smile and say, "Well, there goes another damn good story spoiled by an eyewitness!"

So I'll tell you some of the stories he told me. So far as I know, nobody knows these, I have never read them anywhere, and I am sure they are correct. Anyhow, there were very few eyewitnesses at the time, and they have since passed away.

SO HOW DID HE BECOME CHIEF JUSTICE?

In 1936 my father helped his friend, Senator Culbert Olson, run for governor. Olson was a liberal Democrat which, at that time in California, made him by definition a long-shot. When I asked Papa why Olson appointed him, he told me, "I think he liked some advice I gave him during the campaign." Olson was once invited by a group of his friends and supporters to speak. However, their group was considered to be too left-wing and a political liability. All of Olson's advisers told him not to go, fearing what people and the press might say. Then Olson asked my father's

advice, and he replied, "That's easy. Go! If you won't speak to your friends, whom will you speak to?" Olson went and was elected anyway. He appointed my father as state Director of Finance, where he brought the state budget in line. Then, in 1939, Olson appointed my father as associate justice on the California Supreme Court even though he had no prior judicial experience. In 1940, he moved him up to Chief Justice. So why did Olson appoint him to the court with no judicial experience? Because what is important is not the experience, it's the judgment.

A 1940 newspaper cartoon put it all in historical context: "The News of the Week" shows "Stalin occupies Estonia and Latvia, Winston Churchill puts his cards on the table, Roosevelt appoints Stimson



Chief Justice Gibson and Blaine Gibson in the chief justice's chambers.

as Secretary of War, and Phil Gibson is sworn in as Chief Justice.”

FREEDOM OF THE PRESS: TIMES MIRROR

As a new associate justice, father did not hesitate to stand on principle and rock the boat. In 1940 the Supreme Court upheld a contempt of court ruling against the *Los Angeles Times* for editorializing on a case. Gibson dissented, citing the First Amendment. He wrote: “The course of reform in the judicial field itself depends in part on a free and vigorous press which should not hesitate to condemn where it finds the actions of the court are subject to condemnation.”¹ His arguments were picked up by the U.S. Supreme Court, which unanimously overturned the ruling. Early in his career father had made a very good friend: the press.

JAPANESE INTERNMENT AND THE U.N.

He also made friends with the Japanese American community. They never forgot that Phil Gibson was the only state official in California to speak out publicly against the internment of Japanese Americans and residents during World War II. These were officially called “relocation centers,” but that is not what Papa called them. He didn’t like euphemisms. He said, “Earl Warren was for it. FDR was for it. U.S. Supreme Court Justice Hugo Black upheld it and regretted it to his dying day. What made me a liberal in something like this I can’t say; just instinctively I felt it was injustice.”

In 1945 President Truman asked my father to host the Soviet delegation during the signing of the United Nations Charter. Papa said the president should find someone more qualified because he was not an expert in foreign affairs, to which Truman replied “That’s exactly why I want you.” Again, it’s not the experience, it’s the judgment.

UNDERSECRETARY OF WAR, THE U.S. SUPREME COURT, AND EARL WARREN

Father had a couple opportunities to go to Washington, D.C., in the 1940s. Fortunately for California, and especially fortunately for me, he didn’t. During World War II FDR wanted to appoint him Undersecretary of War. Papa declined because he wanted to stay in California.

In 1946 President Truman considered appointing my father to the U.S. Supreme Court. His qualifications were unquestioned and many urged his appointment, but his birthplace was his undoing. He said, “Truman

told me later that he had too damn many Missourians around him as it was and he was taking some heat for it. So he figured he’d better not appoint someone from Missouri to the bench.”

I asked my father how Earl Warren became Chief Justice. He told me that since Governor Warren had been Dewey’s vice presidential candidate in 1948, he was the front-runner to be Eisenhower’s choice for VP in 1952. However, as you know, Ike passed him over for another Californian, Senator Richard Nixon. To hold the Republican Party together Eisenhower promised Warren the first vacancy on the U.S. Supreme Court. When Chief Justice Fred Vinson died, Eisenhower

wanted to appoint someone else chief and make Warren an associate justice. But Warren reminded him, “Mr. President, you promised the first appointment vacancy and that is Chief Justice.” Ike was a man of his word, and you all know the result. Eisenhower once told my father, “Making Earl Warren Chief Justice was the biggest mistake I ever made,” to which Papa replied, “Mr. President, I think it was the best thing you ever did.” Ike said “I’ll drink to that!”

GREAT CASES

My father had a great sense of history and was ahead of his time. He always told me, “There is no limit to



THREE GIANTS
(left to right) Gov. Edmund G. “Pat” Brown,
California Chief Justice Phil S. Gibson, and U.S. Supreme Court
Chief Justice Earl Warren.

the amount you can accomplish if you don't care who gets the credit." Many judges, attorneys, and scholars refer to the California Supreme Court from 1940 to 1964 as the Gibson Court. Even though I would agree, I won't because Papa wouldn't want it. Sometimes father wrote the opinions and sometimes others did. And that did not matter because he had no pride of authorship and wanted to hold the court together and work as a team. I'll talk about some of those cases and what they say about my father. They demonstrate his commitment to equality, civil liberties, and helping the underprivileged, tempered by an open mind, an understanding of political realities, and respect for the will of the people.

LEADING THE WAY IN CIVIL RIGHTS

In 1944 the court prohibited labor unions from excluding black workers from membership.² It took another 20 years for federal law to do the same. That year the court struck down racially restrictive covenants. In 1948 the court struck down California's prohibition on mixed marriages as violating the equal protection clause.³ At the time 30 states still had such laws.

The California Alien Land Law had for 30 years prevented Japanese American residents from owning land, and had twice been upheld by the U.S. Supreme Court. In 1952 in the *Sei Fuji* case, Gibson wrote the California Supreme Court opinion holding that this law violated the 14th Amendment's equal protection clause.⁴ This time the U.S. Supreme Court agreed.

In the early 1960s the court prohibited a developer from refusing to sell a home to a black couple. In 1963 the Pasadena School case was brought by a 13-year-old black boy who wanted to attend the predominantly white school in his neighborhood. The court held it violated equal protection for a school district to gerrymander boundaries for the purpose of segregation.⁵ All my father really wanted was an equal educational opportunity, a color-blind society.

MAKING IT EASIER FOR THE LITTLE GUY TO RECOVER FOR DAMAGES IN TORT

The court expanded *res ipsa loquitur* in the 1940s, abolished sovereign immunity in 1961, and made manufacturers strictly liable for defective products in 1963. Many argue now for tort reform, saying that the pendulum has subsequently swung too far in favor of the plaintiff. In this debate, remember at that time it was extremely difficult for an injured person to recover, especially against a big corporation, and it was impossible to sue the government. To my father, that was unfair and made no sense. He told me his favorite case was decided in 1855 and involved a drunk who was injured by falling over a hole in a sidewalk. The city admitted the faulty sidewalk, but argued he couldn't recover because he was

drunk. In holding for the plaintiff the court wrote, "A drunk is just as entitled to a safe sidewalk as any sober citizen . . . and a damn sight more in need of one!"⁶

THE EXCLUSIONARY RULE

My father and the court were open to changing their minds when circumstances dictated.

At first they were reluctant to impose the exclusionary rule, holding in 1942 that it did not violate due process to admit unlawfully obtained evidence. But after repeated police break-ins without warrants to obtain evidence illegally, my father and Justice Traynor changed their minds. In 1954 the court overturned the conviction of a bookie based on evidence obtained by Los Angeles police in a warrantless break-in and wiretap.⁷ They needed to protect the privacy of the home or the Fourth Amendment would become a nullity. California led the way, and later the U.S. Supreme Court gave us the exclusionary rule we have today.

A 1963 CASE INVOLVED MONTEREY COUNTY SUPERVISORIAL DISTRICTS.

The Monterey Peninsula had 53% of the population, while South Monterey County had less than 1 percent, yet each was represented by one supervisor. Allan Griffin, publisher of the *Herald*, filed a suit challenging this. The California Supreme Court took one-man, one-vote a step further and ruled that supervisorial districts must contain approximately equal populations.⁸

CALIFORNIA WATER PROJECT

In 1960 voters passed the California State Water Project initiative, a bond measure to build dams, power plants, canals, and pipelines. Challenges were brought, not based on environmental laws, which didn't exist at the time, but on funding matters. In 1963 my father wrote for a unanimous court upholding the constitutionality of the water project.⁹ He respected the political process and the economic needs of the state. He would not find some excuse to let courts stand in the way.

LIMITED ROLE AS JUDGE AND DEATH PENALTY

Despite his personal views, my father understood his limited role as a judge, and respected the will of the people. He was personally opposed to the death penalty, and was especially bothered by its unequal application. "In all my experience, no rich man was ever sentenced to die in California," he said. Death penalty cases were automatically reviewed by the Supreme Court, which upheld many of them. When I asked him why, he said sadly, "Because it was the law."

PROPERTY LAW AND THE DODGERS

My personal favorite when I was a kid was the case where my father bent property laws just a little bit to allow the Brooklyn Dodgers to move to Chavez Ravine

in Los Angeles.¹⁰ Otherwise they might have moved to Houston and the history of baseball would be different. Some law professors, theoretical purists, and my father's friends in New York didn't like that opinion, but I did.

ADMINISTRATION OF THE COURTS

Of all my father's accomplishments, he was most proud of the reorganization of the court system. When he took over as Chief Justice, the California Supreme Court had a three-year case backlog. He cleared it by expanding the staff of research attorneys, and adding pro tem justices, including the first woman ever on the Supreme Court. He transferred some cases to the Courts of Appeal, which had been bypassed. In the 1940s California had almost 800 courts scattered all over the state, with concurrent and overlapping jurisdiction.

In my father's words it was, "A damn stupid arrangement. There were six different kinds of courts below superior court, including at least two I'd never heard of. There were justice of the peace courts, two kinds of city courts, police courts, and a recorder's court. Going up and down Highway 101 you'd find at least two courts in each town. The townspeople ran these courts for revenue. If you came through town they'd find some way to arrest you. They'd use speed traps; put big bushes over stop signs. It was a disgrace. And Monterey County was particularly bad."

The higher courts weren't much better. Some superior court judges hadn't heard a case in a year, two were senile, and one was drunk. So my father went on a fact-finding mission. That does not mean going in a delegation with heavy security and talk only to top officials who are waiting for you with a prepared script of exactly what they know you want to hear. No, he went on a fact-finding mission—Phil Gibson style. He rode around the state in an unofficial car. He walked into a court where a judge sat on the bench with the local sheriff at his side, and watched as they whispered to one another during the trial. My father stood up and asked what was going on, and the judge said, "Well, who the hell are you?" The judge soon found out. Papa got a speeding ticket from a cop hiding behind a speed limit sign, hidden behind a bush, in the middle of nowhere in the Central Valley. And he found one judge drunk on the bench.

By talking to the judges, lawyers, police, local officials, and press, my father learned where judges weren't busy, and where there were terrible backlogs and people would wait for two years for a case to be heard. He used his power as Chief Justice and head of the Judicial Council to temporarily assign judges to clear cases. One article in 1949 referred to him as the "Chief Dispatcher, sending judges here and there so that justice

may be served quickly and efficiently. The knife he uses for cutting red tape is double edged and razor sharp." The Gibson Court reform plan called for streamlining the court system and establishing qualifications for judges. It required passage by the Legislature and constitutional amendment. He worked hard with all to achieve this, and it took effect in 1952. In 1960 my father set up a mechanism to remove unfit or incompetent judges. This was done by constitutional amendment creating the Commission on Judicial Qualifications, to hear reports, and recommend removal or retirement of judges.

My father understood that the Chief Justice is the head executive of the court system. While some judges would find this a distraction from the more

intellectually interesting legal issues of the day, my father loved his administrative role. He recognized that the judicial system and government must operate efficiently—as well as fairly—in order to serve the public. He knew how things worked in the real world, how the court's decisions affected people's lives, and was never lost in legal theories. When asked about his administrative reforms, my father said: "It wasn't anything I did. It was all in the Constitution. All I had to do was to read what was there and do it."

FATHER, MOTHER, AND WOMEN IN THE LAW

My father was always dedicated to bringing women into the legal profession...at all levels. So when the first women graduated from major California law schools he made sure the court recruited and hired them.

My mother graduated from Stanford Law School in 1947. That year she was sworn in to practice by the Chief Justice and went to work as a legal assistant to the Supreme Court. She did the research and wrote a draft of my father's opinion on the Sei Fuji case, which struck down the California Alien Land Law. And despite her fears, when her

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Victoria Gibson plays the piano under the admiring eyes of her husband.

Continued from page 6 draft came back from the chief with his changes for publication, she remarked, "My goodness, he didn't change a word!" After working for the court she spent a year traveling around Europe. My father only took one vacation while he was Chief Justice, to go to Paris in 1954 to convince my mother to marry him. He succeeded, but it took her a few months to come back. Wanting to avoid attention, they met at the train station in Truckee and crossed the state line to be married in Virginia City, Nevada.

A few years after I was born she taught at Stanford Law School. Then in 1969 we moved to Carmel and my mother began working to protect the coast and Carmel Valley from overdevelopment. My father used to love to tell this story. He introduced himself to someone at a party, and the man said, "Gibson, the name seems familiar." Papa explained that he had been chief justice, but the man gave a blank look and said, "No, not that. Oh yeah, I know your wife!" My mother was appointed to the first California Coastal Commission in 1972. In 1975 she was one of the finalists to be appointed to the Monterey County Superior Court, an appointment that went to Judge Harkjoon Paik. This turned out very well for all involved. Both my father and my mother always said Judge Paik was an excellent judge, and history agreed. Plus I figured one judge in the family was enough. Then in 1976 Governor Jerry Brown appointed my mom to the State Parks Commission. I enjoyed traveling with her to all the state parks much more than seeing her in a courtroom, and she left her mark on this beautiful state. I remember, when she was conducting her first hearing as chairman of State Parks, one attorney struggled with how to address her—Madame Chairperson—Chair." To help him feel at ease (and move the meeting along) my mother said "That's okay, chairperson is not a word, and a chair is a piece of furniture, so Madame Chairman will do just fine!" As I drive up and down the coast I see many of the places she fought successfully to preserve. Some homes fit in nicely with the landscape, shielded from the road by cypress trees. But then I see many projects that, well, let me put it this way, were clearly approved after she left. She was responsible for the parks commission acquiring land to add to Point Lobos. She established the walk-in campground at Andrew Molera State Park, and rejected the alternate proposal—a large paved parking lot with hookups for RVs.

Throughout her life here she accomplished a great deal for the environment, but much of what she fought hard to preserve is still in jeopardy. I know she worked together with some of you who are here tonight, and some found themselves on opposite sides. Nevertheless, disagreements with my mother were always gracious and professional, never mean and personal. She also helped start the Monterey College of Law, a school she was very proud of and she was especially proud of

two of its early graduates, Michelle and Kathy, both of whom have earned the Phil Gibson Award.

Both my father and mother were dedicated public servants who sacrificed a lot to do what they believed in. However, one thing they would not sacrifice was family. My father retired in 1964 so he could spend more time with me and my mom. My mother interrupted her legal career so she could raise me. In an interview my father was asked if he would do it all over again. He said, "Yes, because if I had never been chief justice I would never have met Vicki."

After my father retired, President Johnson's staff called to offer him an appointment as chairman of the National Food Marketing Commission, a bipartisan House-Senate Committee to investigate food product safety. My father declined saying he wanted to spend time with his wife and son. Then he received a personal call from the President, and told him, "Hell, I can't do it. I don't know a thing about the subject," to which Johnson replied, "That's exactly why I want you." It seems my father had heard the same thing before from another president. Papa told me when the President calls personally you can't say no, so for two years he traveled back and forth to Washington, D.C., sometimes taking me along. Many of the commission's recommendations were implemented, including content-labeling requirements. Then, when the commission's work was complete, my father recommended that it be dissolved. President Johnson agreed, but was astounded, and said he never saw that before in Washington, a place that was always creating and adding to new commissions, agencies, and departments. My father's philosophy has always been that government is there to serve the people, not to serve itself.

THE VIRGINIA RESTAURANT

On one of those trips to Washington, in 1964, I spent a half hour with Chief Justice Warren and we talked in depth—about baseball. Warren asked his driver, a black man, to take my father, mother, and me to visit Civil War battlefields in Virginia. On the way back we stopped at a fine restaurant in Manassas, and my father invited the driver to join us. As we waited for a table for four the maitre d' took my father aside to explain that they did not serve blacks, but we could have a table for three. The driver sensed what was happening and said, "Sir, it's okay, I'll wait for you." But Papa said it was all or none of us, so we drove back to Washington, and had dinner together there. The next day Warren asked us how the trip was, and I blurted out, "The battlefields and Williamsburg were great, but a restaurant didn't let us eat dinner together because they don't serve blacks, and that's not fair." It appears Chief Justice Warren

agreed. The *Heart of Atlanta* opinion, upholding the Civil Rights Act, was issued three weeks later.

CONCLUSION

My father was a true Californian who never forgot his Missouri roots. He did not judge people by their race, gender, personal preferences, economic or social status. He believed in and practiced equality for all. He had very strong principles and ideals, but could sit down happily with his strongest opponents and share a drink and a laugh.

At my father's memorial tribute at the California Supreme Court in 1984, Justice Stanley Mosk said, "There were no sacred cows to Phil Gibson. Wrong was wrong, no matter how influential the perpetrator."

This award is not just about my father. He would be very honored that it carries his name. It is about something much higher, the standards attorneys should uphold, and commitment to public service. Over and above one's practice of law, in whatever field it may be, lawyers should make some sacrifice for the public good. . . . I thank you for continuing to honor my father by giving this award in his name, and honoring the recipients for their contributions to public service.

I would like to leave you with the words my father told the graduating class from San Francisco Law School in 1940:

"There is every reason to believe that we will be called upon again and again to defend our liberties. We must prepare now for their defense against attacks from within as well as against attacks which may come from without. It is not necessary, however, to suppress

the liberties of our people in order to prepare for their defense. In periods of national emergency, when we are all under great emotional stress, we are likely to be intolerant of others, whose views are not the same as our own. Many good intentioned but unthinking people seek to deny constitutional freedoms to persons who do not agree with the course our government has determined to pursue. In dealing with such situations, we should not allow ourselves to be carried away by hysteria. We should be careful not to violate the rights guaranteed by our constitution. Liberty cannot be divided: it cannot be granted to a majority and denied to a minority. In democracy, freedom means freedom for all. Denial of freedom anywhere in this country means its eventual disappearance everywhere."

ENDNOTES

1. *Times-Mirror Co. v. Superior Court* (1940) 15 Cal.2d 99 at p. 126.
2. *James v. Marinsnip Corp.* (1944) 25 Cal.2d 721.
3. *Perez v. Sharp* (1948) 32 Cal.2d 711.
4. *Sei Fuji v. State of California* (1952) 38 Cal.2d 718.
5. *Jackson v. Pasadena City School District* (1963) 59 Cal.2d 876.
6. *Robinson v. Pioche Bayerque & Co.* (1855) 5 Cal. 460.
7. *People v. Cahan* (1955) 44 Cal.2d 434.
8. *Griffin v. Board of Supervisors* (1963) 60 Cal.2d 318.
9. *Warne v. Harkness* (1963) 60 Cal.2d 579.
10. *Los Angeles v. Superior Court* (1959) 51 Cal.2d 423.

Quiet Legacy

BY RICHARD M. MOSK

The Judge: William P. Clark, Ronald Reagan's Top Hand by Paul Kengor and Patricia Clark Doerner, Ignatius Press (Fall, 2007), ISBN-10: 1586171836

William P. Clark has been one of California's most influential public servants. Yet, for most of his career, he has operated below the radar screen. He has served as a top aide to Gov. Ronald Reagan, a San Luis Obispo County Superior Court judge, a Court of Appeal justice, a California Supreme Court justice, deputy secretary of state, national security adviser, secretary of the interior and a special emissary of the president on many occasions. In addition, he has declined many other significant positions, even the United States Supreme Court.

With this resume, one would expect a number of biographies of him, but Paul Kengor and Patricia Clark Doerner have supplied the first. The authors have the benefit of other works covering the lives of the many major figures that intersected with Clark's.

I appeared before Clark when he was on the California Supreme Court, and he was responsible for my appointment as a judge on the Iran-United States Claims Tribunal. I have stayed in touch with him over the years and was interviewed for the book.

The Clark forebears came to California in the late 19th century. Clark's grandfather had a colorful career as a ranger, Ventura County sheriff and United States marshal. His father had an equally storied career as an